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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/815,149	03/30/2004	Frans Vandenbroek	A-2810-AL	8211
21378	7590	03/24/2010	EXAMINER	
APPLIED MEDICAL RESOURCES CORPORATION			MCEVOY, THOMAS M	
22872 Avenida Empresa			ART UNIT	PAPER NUMBER
Rancho Santa Margarita, CA 92688			3731	
MAIL DATE		DELIVERY MODE		
03/24/2010		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/815,149	<b>Applicant(s)</b> VANDENBROEK ET AL.
	<b>Examiner</b> THOMAS MCEVOY	<b>Art Unit</b> 3731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

1) Responsive to communication(s) filed on 11 January 2010.  
 2a) This action is FINAL.      2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

4) Claim(s) 10-18 and 24-28 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 10-18 and 24-28 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date \_\_\_\_\_

5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 10-18 and 24-28 are rejected under 35 U.S.C. 102(b) as being anticipated by Ortiz et al. (US 5,163,945).

Regarding claim 10, Ortiz et al. disclose a single clip jaw assembly adapted for use with a handle assembly in a surgical clip applier, comprising: a pair of jaws 24 adapted to receive a surgical clip, the jaws being movable between an open state (Figure 10) and a closed state (Figure 11); a pair of elongate support arms 40 each adapted to support an associated one of the jaws between the open state of the jaws and the closed state of the jaws; a bridge (at 51, Figure 9) disposed between the support arms to hold the jaws in an aligned relationship between the open state and the closed state; a housing 50 disposed over at least the bridge, the housing having a generally fixed relationship with the bridge while permitting movement of the jaws between the open state and the closed state, and the housing having no clip loading mechanism housed therein (Figure 9); and a coupling included in the housing, the coupling being adapted for attaching the housing to the handle assembly (as can be seen when comparing Figures 3 and 9, member 64 partially acts as a coupling as claimed and is part of the assembly which allows the housing to be assembled or

disassembled – removably attached – with the handle); wherein the jaw assembly is configured to receive only a single surgical clip at a time, and the pair of jaws is adapted to receive a surgical clip exteriorly of the jaw assembly (evident from Figures 1-8). Regarding claim 11, the jaws, the support arms, and the bridge are integral and form a jaw component (evident from Figure 9). Regarding claim 12, the claimed phrase "wherein the housing is molded over the bridge" is being treated as a product by process limitation; that is, as set forth in MPEP 2113, product by process claims are not limited to the manipulation of the recited steps, only the structure implied by the steps. Once a product appearing to be substantially the same or similar is found, a 35 USC 102/103 rejection may be made and the burden is shifted to applicant to show an unobvious difference. MPEP 2113. The housing 50 appears to be structurally equivalent to an identical housing which is formed by being molded over the bridge. The housing 50 is capable of being formed by this process while maintaining all the structural features disclosed in the reference. Regarding claim 13, the arms are resilient between the open position of the jaws and the closed position of the jaws (col. 5, lines 19-20). Regarding claim 14, at least one of the arms is biased to maintain the jaws in the open position (col. 5, lines 19-20). Regarding claim 15, the arms are disposed generally in a plane separating a first side of the arms from a second side of the arms; and the housing is disposed with first portions adjacent the first side of the arms and second portions adjacent the second side of the arms (Figure 3). Regarding claim 16, the upper and lower hemispheres of the housing are adjacent to the arms as claimed and are included in the coupling. Regarding claim 17, the jaws are movable in

the plane between the open state and the closed state (Figure 10 vs. Figure 11).

Regarding claim 18, member 46/48 can be considered as the housing with member 58 being the coupling. The housing is generally fixed to the bridge. Member 48 has the first and second portions as claimed. The arms can be considered as the portions proximal of members 42. When member 48 is advanced forward, the arms move inward, away from contact with the sides of the housing except for the first and second portions (top and bottom of arms contacting member 48). Regarding claim 24, the coupling 24 can be regarded as a mounting stub configured to be received by a mounting aperture (formed by member 66 or 68, Figure 3) of the handle assembly. Regarding claim 25, member 60 can be regarded as part of the coupling as claimed and it comprises a second mounting stub (at either end of 60) configured to be received by a second mounting aperture (aperture in member 66, 68 or 22) of the handle assembly (Figure 3). Regarding claim 26, the coupling and mounting stubs could be used to connect to a handle which is configured for use with a multiple-clip cartridge. A multiple clip cartridge could be configured to use the first mounting stub since it serves to simply connect a stationary tube and axially movable actuation components to a handle. Regarding claims 27 and 28, member 46 could be considered as the housing with member 58 as the claimed coupling. The bridge could be considered as being adjacent (in a broad sense) the proximal end of member 46. The distal and proximal ends are broadly claimed.

***Response to Arguments***

3. Applicant's arguments filed January 11<sup>th</sup> 2010 have been fully considered but are not persuasive. Applicant has argued that the coupling of Ortiz et al. does not allow removable attachment of the housing to the handle as claimed. Examiner respectfully disagrees and believes that this limitation only requires the coupling to be part of an assembly which allows the housing to be disassembled from the handle. Members 64, 66 and 68 form an assembly which allows the housing 50 to be disassembled from the handle as evident from Figures 3 and 9. Applicant has argued that the coupling 64 of Ortiz et al. is not included within the housing. Examiner believes that Figure 3 clearly shows member 64 residing within member 50.

***Conclusion***

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas McEvoy whose telephone number is (571)270-5034. The examiner can normally be reached on M-F, 9:00-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan Nguyen can be reached on 571-272-4963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

6. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Thomas McEvoy/  
Examiner, Art Unit 3731

/Anhtuan T. Nguyen/  
Supervisory Patent Examiner, Art Unit 3731  
3/23/10